

AMENDED IN ASSEMBLY MAY 11, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 5, 2006

AMENDED IN ASSEMBLY FEBRUARY 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1891

Introduced by Assembly Member Houston

January 24, 2006

An act to add Section 632.2 to the Penal Code, and to amend Section 7903 of the Public Utilities Code, relating to telephone records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1891, as amended, Houston. Telephone records: obtaining telephone calling pattern record or list.

(1) Existing law prohibits a telephone corporation, as defined, from making certain categories of personal information, including the subscriber's personal calling patterns, available to any other person or corporation without first obtaining the residential subscriber's consent in writing. Existing law provides that a subpoena duces tecum for personal records, as defined, maintained by a telephone corporation, is not valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, consistent with this requirement. Other existing law requires that a provider of mobile telephony services, as defined, provide subscribers with a means by which to obtain reasonably current and available information on the subscriber's service usage.

Existing law makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime to knowingly procure, ~~attempt to procure, solicit, or conspire with another person to procure,~~ a telephone calling pattern record or list, as defined, of another person that is a resident of the state, without the written authorization of the customer to whom the record pertains, or by any fraudulent, deceptive, or false means procure a telephone calling pattern record or list. The bill would additionally make it a crime to knowingly sell, attempt to sell, offer to sell, or conspire to sell a telephone calling pattern record or list of another person that is a resident of the state, without the written authorization of the customer to whom the record pertains or to receive a telephone calling pattern record or list knowing that it was obtained without the written authorization of the customer, or was obtained by fraudulent, deceptive, or false means. The bill would impose different criminal penalties based upon whether the violation is a 1st, 2nd, or subsequent offense. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(2) Existing law authorizes a person who has been injured by a violation of specified penal provisions relating to invasion of privacy, to bring an action against the person who committed the violation for the greater of \$5,000 or 3 times the amount of the actual damages sustained as a result of the violation, and for injunctive relief.

This bill would provide that for a violation of the above-described prohibitions on the procurement, ~~obtaining~~ *receiving*, or selling of a telephone calling pattern record or list, the customer, as defined, in addition to the existing remedies available to a person for violation of the penal provisions relating to invasion of privacy, may seek restitution for any financial loss sustained by the customer or another person as a result of the offense and disgorgement of any unlawful monetary or other gain, or any other equitable relief that the court deems appropriate, and for reasonable attorney's fees and costs of suit. The bill would authorize a telecommunications service provider from which a telephone calling pattern record or list has been unlawfully acquired to bring an action seeking any equitable relief, including disgorgement of any unlawful monetary or other gain, that the court deems appropriate, and for reasonable attorney's fees and costs of suit.

(3) Existing law provides that every agent, operator, or employee of any telegraph or telephone office, who uses or appropriates any information derived from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by reason of trust, or who trades or speculates upon any information so obtained, or who in any manner turns or attempts to turn the information obtained to his own account, profit, or advantage, is punishable by imprisonment in the state prison, or in county jail, not to exceed one year, or by fine not exceeding \$10,000, or by fine and imprisonment.

This bill would make this prohibition applicable to an agent, operator, or employee of any provider of telecommunications services, as defined, and would make other nonsubstantive changes. The bill would impose a state-mandated local program by expanding the application of an existing crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Pursuant to federal law, every telecommunications carrier
4 has a duty to protect the confidentiality of proprietary
5 information of, and relating to, customers. Federal law requires a
6 telecommunications carrier to disclose customer proprietary
7 network information, upon affirmative written request by the
8 customer, to any person designated by the customer.

9 (b) State law prohibits a telephone corporation from making
10 available to any other person or corporation, a subscriber's
11 personal calling patterns, including any listing of the telephone or
12 other access numbers called by the subscriber, without first
13 obtaining a residential subscriber's consent. Other state law
14 requires that a provider of mobile telephony services provide

1 subscribers with a means by which to obtain reasonably current
2 and available information on the subscriber's service usage.

3 (c) Each year, telephone company service representatives
4 receive millions of calls from customers seeking to change
5 service plans, troubleshoot service problems, or simply to obtain
6 copies of past telephone service bills. Easy access to customer
7 service is critical to ensuring customer satisfaction and the ability
8 of telephone companies to respond to and resolve any customer
9 concerns.

10 (d) Telephone companies employ numerous techniques to
11 identify and authenticate customers to ensure that telephone
12 records are not disclosed to unauthorized third parties. However,
13 because the customer is not physically present to be identified,
14 the risk of fraud is present despite the reasonable security
15 measures employed by telephone companies to validate customer
16 identity.

17 (e) Some unscrupulous third parties have impersonated
18 customers to fraudulently and illegally obtain telephone records.
19 These third parties often provide nonpublic personal information
20 obtained from other than the telephone company, to authenticate
21 the identity of the customer, such as a social security number,
22 date of birth, and even mother's maiden name of the customer.
23 Sometimes these unscrupulous third parties impersonate law
24 enforcement to obtain information to respond to an "emergency."
25 These fraudulent acts are often referred to as "pretexting." In
26 some cases, rogue carrier employees have been found to violate
27 company rules by selling telephone records. All of these
28 activities are fraudulent and illegal.

29 (f) Recently, some third parties have offered telephone records
30 for sale online and recent news stories have suggested that
31 telephone companies are being defrauded regularly by these data
32 thieves. Customer telephone records are being offered for sale by
33 online data brokers and the means and methods employed by
34 these companies are not completely known. However, what is
35 clear, is that the tactics used by these companies to obtain private
36 customer records of telephone calls are illegal, since telephone
37 records are not for sale by telephone companies and they do not
38 knowingly release such records other than with the consent of a
39 customer who has properly identified themselves, as required or
40 permitted by law.

(g) The law should punish not only the third party that actually procures the records or sells them, but also the person who receives them because the telephone records actually are stolen property.

(h) State law makes it illegal for any person to obtain financial records by false pretenses. A customer's telephone records deserve the same protection.

SEC. 2. Section 632.2 is added to the Penal Code, to read:

632.2. (a) For purposes of this section, the following terms have the following meanings:

(1) "Customer" means any person that purchases or subscribes to any product or service provided or billed by a telecommunications service provider or in whose name the service is listed.

(2) "Person" means an individual, business association, partnership, limited partnership, corporation, limited liability company, trust, estate, cooperative association, or other entity.

(3) "Procure" means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.

(4) "Telecommunications service provider" includes every telephone corporation, as defined in Section 234 of the *Public Utilities Code*, every provider of voice communication over the Internet utilizing voice over Internet protocol, every provider of voice communication to end users over a mobile satellite service involving the provision of commercial mobile radio service, pursuant to Parts 20 and 25 of Title 47 of the Code of Federal Regulations, and every provider of mobile telephony services, as defined in Section 2890.2 of the *Public Utilities Code*.

(5) "Telephone" means a device used for the transmission of voice communication, whether the voice communication is made from or to any of the following:

(A) A voice-communication ~~communications~~ device connected to the public switched telephone network.

(B) A cordless telephone, as defined in Section 632.6.

(C) A voice communications device operating over the Internet utilizing voice over Internet protocol.

(D) A voice communications device that provides mobile satellite service involving the provision of commercial mobile

1 radio service, pursuant to Parts 20 and 25 of Title 47 of the Code
2 of Federal Regulations.

3 (E) A ~~voice-communication~~ *communications* device that
4 provides commercially available interconnected mobile phone
5 service that provides access to the public switched telephone
6 network utilizing radio wave technology to transmit calls,
7 including cellular radiotelephone, broadband Personal
8 Communications Services (PCS), and digital Specialized Mobile
9 Radio (SMR).

10 (6) "Telephone calling pattern record or list" means any
11 information retained by a telecommunications service provider
12 that indicates the telephone or other access numbers dialed by a
13 customer, or other ~~person's~~ *persons* using the customer's
14 telephone with the consent of the customer, or the telephone or
15 other access number of an incoming call directed to a customer,
16 and any information pertaining to voice communications utilizing
17 a customer's telephone, including when the communication
18 began and ended, the duration of the communication, the location
19 where the communication was initiated or received, and any
20 charges associated with the communication. "Telephone calling
21 pattern record or list" does not include information collected and
22 ~~retained by the telecommunications service provider for business~~
23 ~~planning or marketing analysis. "Telephone calling pattern or~~
24 ~~list" includes any of the information described in subdivision (a)~~
25 ~~of Section 2891 of the Public Utilities Code. "Telephone calling~~
26 ~~pattern record or list" does not include information collected and~~
27 ~~retained by customers relative to their own telephone calls,~~
28 ~~including information developed utilizing caller identification or~~
29 ~~other similar technology, to identify the calling numbers of~~
30 ~~persons placing calls to the customer. retained for business~~
31 ~~planning or marketing analysis by customers, or on behalf of~~
32 ~~customers, utilizing caller identification or other similar~~
33 ~~technology.~~

34 (b) No person shall do any of the following:

35 (1) Knowingly procure, ~~attempt to procure, solicit, or conspire~~
36 ~~with another person to procure,~~ a telephone calling pattern record
37 or list of any other person that is a resident of this state, without
38 the written authorization of the customer to whom the record
39 pertains, or by any fraudulent, deceptive, or false means procure
40 a telephone calling pattern record or list of another.

1 (2) Knowingly sell, attempt to sell, offer to sell, or conspire to
2 sell a telephone calling pattern record or list of any other person
3 that is a resident of this state, without the written authorization of
4 the customer to whom the record pertains.

5 (3) Receive a telephone calling pattern record or list of any
6 other person that is a resident of this state, knowing that the
7 record has been obtained without the written authorization of the
8 customer to whom the record pertains or was obtained by
9 fraudulent, deceptive, or false means.

10 (c) (1) Any person that violates subdivision (b) shall, for a
11 first offense, be punished by a fine not exceeding one thousand
12 dollars (\$1,000), or by imprisonment in the county jail not
13 exceeding one year, or by both a fine and imprisonment.

14 (2) Any person that violates subdivision (b) shall, for a second
15 offense, be punished by a fine not exceeding two thousand five
16 hundred dollars (\$2,500), or by imprisonment in the county jail
17 not exceeding one year, or by both a fine and imprisonment.

18 (3) Any person that violates subdivision (b) shall, for a third or
19 subsequent offense, be punished by a fine not exceeding ten
20 thousand dollars (\$10,000), or by imprisonment in the county jail
21 not exceeding one year, or by both a fine and imprisonment.

22 (d) In a criminal prosecution brought for violation of
23 subdivision (b), venue shall be proper in the county of residence
24 of the person whose calling pattern record or list was procured,
25 sold, or received, or where any element of the crime was
26 committed, regardless of whether the defendant was present in
27 the county at the time the element of the crime was committed.

28 (e) Any personal information contained in a telephone calling
29 pattern record or list that is obtained in violation of subdivision
30 (b) shall be inadmissible as evidence in any judicial,
31 administrative, legislative, or other proceeding except when that
32 information is offered as proof in an action or prosecution for a
33 violation of this section.

34 (f) In addition to those civil remedies available pursuant to
35 Section 637.2, a customer whose telephone calling pattern record
36 or list is procured, sold, or acquired in violation of subdivision
37 (b), may seek both of the following:

38 (1) Reasonable attorney's fees and costs of suit.

39 (2) Restitution for any financial loss sustained by the customer
40 or another person as a result of the offense and disgorgement of

1 any unlawful monetary or other gain, or any other equitable relief
2 that the court deems appropriate.

3 (g) A telecommunications service provider from which a
4 telephone calling pattern record or list has been unlawfully
5 acquired in violation of subdivision (b), may seek both of the
6 following:

7 (1) Reasonable attorney's fees and costs of suit.

8 (2) Any equitable relief, including disgorgement of any
9 unlawful monetary or other gain, that the court deems
10 appropriate.

11 (h) Any civil action brought pursuant to Section 637.2 or
12 subdivision (f) or (g) may be commenced not later than two years
13 after the date upon which the claimant first discovered, or had a
14 reasonable opportunity to discover, the violation of subdivision
15 (b).

16 (i) (1) Nothing in this section prohibits the Attorney General,
17 any district attorney, or any assistant, deputy, or investigator of
18 the Attorney General or any district attorney, any officer of the
19 California Highway Patrol, any chief of police, assistant chief of
20 police, or police officer of a city, county, or city and county, any
21 sheriff, undersheriff, or deputy sheriff regularly employed and
22 paid in that capacity by a county, or any person acting pursuant
23 to the direction of one of these law enforcement officers acting
24 within the scope of his or her authority, from obtaining a
25 telephone calling pattern record or list in connection with the
26 performance of the official duties of the law enforcement agency.

27 (2) Nothing in this section prohibits any person from obtaining
28 a telephone calling pattern or record pursuant to a lawfully issued
29 and noticed subpoena or court order.

30 (j) This section does not prohibit a telecommunications service
31 provider from obtaining, using, disclosing, or permitting access
32 to a telephone calling pattern or record in any of the following
33 circumstances:

34 (1) Pursuant to a lawfully issued and noticed subpoena or as
35 otherwise authorized by law.

36 (2) Pursuant to the request and consent of the consumer.

37 (3) ~~When necessary incidental~~ *Incidental* to the rendering of
38 service to the customer, to protect the property rights of the
39 provider of the service, or to protect customers and other
40 telecommunications service providers *and providers of other*

1 *services* from fraudulent, abusive, or unlawful use of, or
2 subscription to, the service.

3 *(4) Incidental to billing customers for services or products or*
4 *the collection of charges billed to customers.*

5 ~~(4)–~~

6 (5) When the telecommunications service provider reasonably
7 believes that an emergency exists involving immediate danger of
8 death or serious injury to any person, to provide information to a
9 governmental entity responsible for responding to the
10 emergency.

11 ~~(5)–~~

12 (6) When a telecommunications service provider would have a
13 defense to an action pursuant to Section 2707 of Title 18 of the
14 United States Code.

15 ~~(6)–~~

16 (7) To the National Center for Missing and Exploited
17 Children, in association with a report pursuant to Section 227 of
18 the Victims of Child Abuse Act of 1990 (42 U.S.C. Sec. 13032).

19 (k) (1) The penal provisions of this section are in addition to,
20 and not exclusive of, any other penal provision and do not
21 preclude prosecution under any other law.

22 (2) The civil rights and remedies provided by this section are
23 in addition to, and not exclusive of, any civil rights and remedies
24 otherwise available to any person.

25 SEC. 3. Section 7903 of the Public Utilities Code is amended
26 to read:

27 7903. (a) Every agent, operator, or employee of any
28 telegraph or telephone office, or any other provider of
29 telecommunications services, who in any way uses or
30 appropriates any information derived from any private message
31 passing through his or her hands, and addressed to any other
32 person, or in any other manner acquired by reason of his or her
33 trust as such agent, operator, or employee, or trades or speculates
34 upon any such information so obtained, or in any manner turns,
35 or attempts to turn, the information so obtained to his or her own
36 account, profit, or advantage, is punishable by imprisonment in
37 the state prison, or by imprisonment in the county jail not
38 exceeding one year, or by fine not exceeding ten thousand dollars
39 (\$10,000), or by both the fine and imprisonment.

(b) For purposes of this section, “provider of telecommunications services” includes every telephone corporation, as defined in Section 234, every provider of voice communication over the Internet utilizing voice over Internet protocol, every provider of voice communication to end users over a mobile satellite service involving the provision of commercial mobile radio service, pursuant to Parts 20 and 25 of Title 47 of the Code of Federal Regulations, and every provider of mobile telephony services, as defined in Section 2890.2.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.